

**FRIEDMAN KAPLAN SEILER & ADELMAN LLP**

BRUCE S. KAPLAN  
EDWARD A. FRIEDMAN  
BARY D. FRIEDMAN  
BARRY A. ADELMAN  
ERIC SEILER  
ROBERT D. KAPLAN  
ANDREW W. GOLDWATER  
ROBERT J. LACK  
GREGG S. LERNER  
PAUL J. FISHMAN  
WILLIAM P. WEINTRAUB  
RICHARD M. HOFFMAN  
SCOTT M. BERMAN  
GERALD ADLER  
HAL MEIER  
PHILIPPE ADLER  
LANCE J. GUTKO  
KATHERINE L. PRINGLE  
MERYL S. ROSENBLATT  
DANIEL S. RAPPOORT  
DAVID I. TANENBAUM  
HALLIE S. LEVIN  
ANNE E. BEAUMONT  
MARY E. MULLIGAN  
ANDREW W. SCHILLING  
EMILY A. STUBBS  
KENT H. ANKER  
AMY G. BROWN  
MALA ANUJA HARKER

1633 BROADWAY  
NEW YORK, NY 10019-6706  
TELEPHONE (212) 633-1100  
FACSIMILE (212) 633-1250  
WWW.FKLAW.COM

WRITER'S DIRECT DIAL  
(212) 633-1245

WRITER'S DIRECT FAX  
(212) 373-7945

E-MAIL  
ABEAUNONT@FKLAW.COM

HARVEY WEISSBARD  
NORMAN ALPERT  
ANDREW A. GUARTNER  
COUNSEL

LISA S. GETSON  
ASAF REMBEL  
JOHN N. ORSHIN  
JEFFREY R. WANG  
MYRIAM FORD  
SHIRA D. WEINER  
CHAD M. LEICHT  
JASON C. RUBINSTEIN  
MICHAEL A. GORDON  
DANYA SHOCAIR REDA  
ROBERT S. LANDY  
RICKIE M. SONPAL  
STEVEN E. FRANKEL  
NIKETH VELANDOR  
LKI ZANDPOUR  
L. REID SKIBELL  
DANIEL R. GREENBERG  
KEVIN S. HAEGERLE  
SHEELA V. PAI  
AMY LURIA  
DANIEL IAN HEE  
CHRISTOPHER WINNER  
JENNIFER P. KRAKOWSKY  
NETANEL PINHASOV  
JORDAN I. BRACKETT

September 18, 2008

**BY FEDEX**

Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: **MUR 6065**

Dear General Counsel:

As indicated on the enclosed Statement of Designation of Counsel, this firm represents the Huffington Post. We write in response to the Commission's letter dated September 11, 2008 concerning the above-referenced Matter Under Review.

The Matter Under Review arises out of a letter to the Commission from Charisse C. Wilson dated August 22, 2008, which alleges that the Huffington Post's publication of the Commission's data on its Fundrace2008 page is for "commercial purposes" because it (1) makes Ms. Wilson "a prime prospect for all kinds of solicitations," and (2) attracts visitors to the Huffington Post web site, which allows it to sell advertising and generate revenue. Ms. Wilson asks that her street address be removed from the Fundrace2008 page and from all of the Commission's reports.

The Huffington Post is a news and opinion website, which in three years has become "The Internet Newspaper." The site offers coverage of politics, media, business, entertainment, living and style, and is a top destination for news, blogs and original content. The Huffington Post has eleven million unique users each month and is the most-linked-to blog on the Internet, according to Technorati. The Huffington Post has over 1,800 influential bloggers – from celebrities and politicians to academics and

649934.1

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2008 SEP 19 P 4:48

29044231784

policy experts – who contribute in real-time on a wide range of topics making news today.

The Huffington Post maintains and at all times has maintained Fundrace2008 in full compliance with the applicable law. Fundrace2008 (fundrace.huffingtonpost.com) provides public information on campaign finance, a topic that is both newsworthy and of interest to the site's readers. The information on the site has been obtained from the Commission's ftp website and comprises the information submitted by donors when they make campaign contributions of \$200 or more in a calendar year, namely, each donor's name, address, city, state, zip code, occupation and employer. Fundrace2008 permits the public to search the data by any of those fields.

The Huffington Post is only one of a number of news organizations that publish FEC data in this manner:

- The New York Times website has a page that permits the public to search the Commission's data by name or zip code:  
<http://elections.nytimes.com/2008/president/campaign-finance/search-contributions.html>
- The Washington Post website has a page that permits the public to search the Commission's data by last name, zip code, recipient or amount: <http://elections.nytimes.com/2008/president/campaign-finance/search-contributions.html>
- Congressional Quarterly has a website that permits subscribers to search by name, zip code, state, city, employer or occupation and view individual contributor filings:  
<http://corporate.cq.com/wmspage.cfm?parm1=102>

Pursuant to 2 U.S.C. § 438(a)(4), "information copied from [FEC] reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." The regulations promulgated under that section state that:

The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

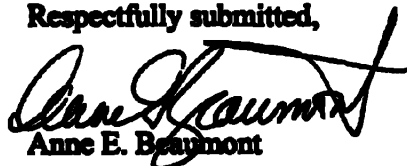
11 C.F.R. § 104.15(c). This regulation reflects, among other things, the legislative history of Section 438(a)(4), which indicates that Congress explicitly contemplated that

"newspapers may, if they wish, run lists of contributors and amounts" that are obtained from the Commission's data. *See FEC v. Political Contributions Data*, 943 F.2d 190, 192 (2d Cir. 1991) (discussing legislative history).

Ms. Wilson's first allegation is that the publication of her data on the Fundrace2008 page is for commercial purposes, because it makes her a prospect for commercial solicitation by third parties. However, the publication of FEC data on the Fundrace2008 page does not create the possibility that Ms. Wilson will be solicited. That possibility is a consequence of the data being published by the Commission in the first instance, and is dealt with by Section 438(a)(4) and 11 C.F.R. § 104.15, which expressly ban such solicitation. Indeed, there is no suggestion that the Huffington Post (or anyone else) actually has solicited Ms. Wilson using data from the Fundrace2008 page.

Ms. Wilson also alleges that the publication of her data on the Fundrace2008 page is for commercial purposes, because it may attract visitors to the Huffington Post web site, thereby generating advertising revenue. This argument rests on the premise that the fact that the Huffington Post is a for-profit enterprise renders all of its activities, including its publication of FEC data, for "commercial purposes." Yet virtually every news organization stands in the same position, and the Commission nevertheless has determined that news organizations may publish its data. Thus, the for-profit status of a news organization alone does not mean that its use of the Commission's data is for "commercial purposes." Consistent with this, courts have repeatedly ruled that the for-profit status of a news organization does not render its activities *per se* "commercial." *See, e.g., Leidlhardt v. L.F.P. Inc.*, 860 F.2d 890, 895 (9th Cir. 1988) (fact that magazine "is operated for profit does not extend a commercial purpose to every article within it"); *Myskina v. Conde Nast Publications, Inc.*, 386 F. Supp. 2d 409, 418 (S.D.N.Y. 2005) ("[t]hat a publication is produced for profit or even that 'a publication may have used a person's name or likeness 'solely or primarily to increase the circulation' of a newsworthy article - and thus increase profits - does not mean that the name or likeness has been used for trade purposes"); *Davis v. High Society Magazine, Inc.*, 90 A.D.2d 374, 379, 457 N.Y.S.2d 308, 313 (2d Dep't 1982) (media's use of name or picture not considered use for purposes of trade "irrespective of the fact that such publications are carried on largely, even primarily, to make a profit"). The "principal purpose" of the Huffington Post is to publish news and opinion, and its publication of FEC data therefore does not violate Section 438(a)(4) or 11 C.F.R. § 104.15(c).

Respectfully submitted,



Anne E. Beaumont

Enclosure

29044231786



FEDERAL ELECTION COMMISSION  
999 E Street, NW  
Washington, DC 20463

2008 SEP 19 P 4:48

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**STATEMENT OF DESIGNATION OF COUNSEL**  
**Please use one form for each Respondent/Client**  
**FAX (202) 218-2022**

MUR# 6065

NAME OF COUNSEL: Anne E. Beaumont

FIRM: Friedman Kaplan Seiler & Adelman LLP

ADDRESS: 1633 Broadway

New York, NY 10019-6708

TELEPHONE- OFFICE (212) 833-1245

FAX (212) 373-7945

The above-named individual and/or firm is hereby designated as my  
counsel and is authorized to receive any notifications and other communications  
from the Commission and to act on my behalf before the Commission.

9/17/08  
Date

[Signature]  
Respondent/Client Signature

VP Finance & Ops  
Title

RESPONDENT/CLIENT HuffingtonPost.com  
(Please Print)

MAILING ADDRESS: 560 Broadway, Suite 308

New York, NY 10012

TELEPHONE- HOME ( ) \_\_\_\_\_

BUSINESS (212) 245-7844

Information is being sought as part of an investigation being conducted by the Federal Election  
Commission and the confidentiality provisions of 2 U.S.C. § 4379(a)(1)(A) apply. This section  
prohibits making public any investigation conducted by the Federal Election Commission without  
the express written consent of the person under investigation

Rev. 2008

29044231787